

In response, Applicants elect, with traverse, Group I, claims 11-29, for examination on the merits. Applicants respectfully submit that the evidence and explanation provided by the PTO fail to establish a serious burden upon which a restriction requirement must be based. Applicants also reserve the right to address any prior rejection over Axelsson et al. (WO 87/05803).

On page 4 of the Office Action, the PTO formulated the election of species requirement as follows:

“If Group I is elected, EACH of the following species elections are required:

- a. *Third component*: (e.g. DMPC lipids, SM lipids, PEG, or a specific mixture thereof), with claims 11 and 14-21 reading upon this species.
- b. *Administering device* (e.g. nebulizer, metered dose inhaler etc.) with claims 22-23 and 27-29 reading upon this species.
- c. *Active agent* (e.g. drug or dye), with claims 25-27 reading upon this species.”

In response, Applicants elect, with traverse, SM lipids as the single species of the third component; a nebulizer as the single species of the administering device; and a drug compound as the single species of the active agent. Applicants respectfully submit that the evidence and explanation provided by the PTO fail to establish a serious burden upon which an election of species requirement must be based. Applicants identify claims 11-14, 17-18 and 22-26 as readable upon the elected species.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith,

Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extension fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date

April 29, 2009

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